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Global Sustainability Standards Board
Barbara Strozzilaan 336
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By email – tax@globalreporting.org

Exposure draft of GRI topic-specific Standard: Tax and Payments to Government

CPA Australia has provided comments on the exposure draft of GRI topic-specific standard: Tax and Payments to Government through the web-based submission form.

The attachment records CPA Australia's responses to each of the questions posed in the exposure draft [public comment form](#), including comments on specific sections.

A handwritten signature in black ink, appearing to read 'G Pflugrath'.

Dr. Gary Pflugrath CPA
Head of Policy and Advocacy
CPA Australia

Encl.

Global Reporting Initiative – tax and payments to governments

Question 1: Are any of the management approach disclosures in GRI XXX: Tax and Payments to Governments not understandable and/or feasible? If so, why, and, what, if any, wording revisions or guidance would you suggest?

As a starting principle, disclosure requirements of GRI should be consistent with the reality of how multinational businesses operate. While GRI initiatives are a valuable tool in enhancing transparency and influencing corporates to consider sustainability and corporate citizenship as part of their business decisions, there is the potential for management approach disclosures to be interpreted subjectively and come into conflict with what a reasonable shareholder expectation of a business would be. It should be noted that tax is a cost of doing business and that a profit-driven entity will, and is expected to, seek to legally manage its tax expenses.

Disclosure requirements need to be considered in the context of the legal and commercial reality of international business. Commercially sensitive information should also be exempted from disclosure and this may apply to information related to tax strategies and risk identification (@225, 230, 283). Information which may unreasonably impact a company's share price should also be exempted.

In practice, responses may be abstract and generic – tax strategy is a broad term and a business will tailor its tax approaches depending on the jurisdictions in which it operates and the avenues available to them to legally manage their taxes. The Rio Tinto Taxes Paid 2017 report¹ is an example of what corporate tax payment disclosures might look like.

Specific comments are:

- @246-249: there is no defined list of 'tax havens' – there are low transparency and/or low tax jurisdictions. Delaware, City of London are sub-national and are also examples. Tax incentives are numerous in every jurisdiction and some countries/states will commit to company-specific beneficial tax agreements to encourage investment (e.g. Amazon across US states). We suggest confirming that this is limited to incentives that are the discretion of the tax administration/government ministers rather than those enshrined in law for all businesses to access. There may be legal restrictions to the company disclosing such arrangements which should be acknowledged.
- @262: companies will seek to comply with the law and well-drafted legislation should reflect the intent of the legislators. *Guidance for Disclosure XXX-1-a-iii* is a subjective assessment and seems to suggest that corporates should pay more than is required if they believe the legislation is not crafted

¹ <https://www.globalreporting.org/standards/media/2160/public-comment-form-exposure-draft-standard-for-tax-and-payments-to-governments.pdf>

appropriately to reflect the intended 'spirit'. This is not a reasonable expectation of corporates, nor is there any legal basis for them to do so. Further, there are issues where the law is not definitive and there is often inherent uncertainty in the application of laws (e.g. transfer pricing).

- @382-385 *Guidance for Disclosure XXX-3-a-I* should recognise that tax authority engagement is contingent on the products/services provided by the tax administration. Some jurisdictions prefer light-touch engagement while others, such as Australia, invest heavily in early engagement, tailored compliance approaches and ongoing dialogue. It is also influenced by the level of complexity and/or uncertainty in a given tax system. These are factors outside the business's control.
- @389: lobbying activities requires further definition. Executives will often meet with politicians and government representatives, participate in stakeholder discussions and make submissions during government consultation as critical participants in the tax system but may not be advocating any position. Examples should be provided for clarity.

Question 2: With respect to reporting requirements in the management approach disclosures in GRI XXX: Tax and Payments to Governments, are all of them critical to describing the management approach on tax and payments to governments. If not, which requirements are not critical?

The concept of these disclosures being 'critical' raises the question of the purpose of these standards. If the intent is to enable non-government and non-shareholder parties to ascertain the likelihood of a company being tax compliant, then the risk arises that it may also cause confusion or negative impacts to governments and/or shareholders where information is misinterpreted or misrepresented.

In Australia, the voluntary Corporate Tax Transparency Code² reflects many of these principles and is a government-supported approach to encouraging tax transparency by corporates.

Specific comments are:

- @262: *Guidance for Disclosure XXX-1-a-iii* is a subjective assessment and is not critical to disclosing tax and payments to government amounts. Suggest its removal
- @308 *Guidance for Disclosure XXX-2-a-ii* seems to be a sub-set of @ 321 *Guidance for Disclosure XXX-2-a-iii* – training or succession planning disclosures are not critical and suggest its removal

Question 3: Are any of the topic-specific disclosures in GRI XXX: Tax and Payments to Governments not understandable and/or feasible? If so, why, and, what, if any, wording revisions or guidance would you suggest?

² <http://taxboard.gov.au/current-activities/transparency-code-register/>

These topic-specific disclosures appear to be based on the OECD's Country by Country Reporting (CbCR) labels defined in the OECD's transfer pricing guidelines. These were developed in the context of reporting privately to tax administrations for the purposes of risk assessment and were never intended for public disclosure.

In effect, these disclosures would publicise companies' global value chains, similar to the information used for transfer pricing functional analysis. As transfer pricing practitioners would attest, the interpretation of this information requires significant expertise, company engagement, additional commercially sensitive information and a detailed understanding of pricing economics. The OECD has noted that the information should not be used as a basis for tax adjustments, it is solely for potential risk identification and to guide audit focus areas³.

There are therefore valid concerns that such detailed information will be open to misinterpretation and confuse the broader debate to no productive outcome. These views are reflected in the consultation on the European Commission proposed directive on corporate tax transparency (country-by-country reporting) in 2016⁴. The synopsis report on this consultation⁵ reflects a distinct difference of opinion between individuals/civil society organisations and businesses in terms of what is appropriate for public disclosure. PwC has also noted CbCR data may not be able to be properly interpreted to assess whether business is paying tax in the "right" place and in the "right" amounts⁶.

Further, depending on the tax regime, the corporate profit may include global revenues and tax liabilities associated with profits/activities in other countries. For example, Australian resident companies must report all worldwide income and may pay additional tax in Australia where foreign tax credits are insufficient. Australia also has an imputation system which can impact on tax reporting.

Another factor to consider is the interaction between the tax and transfer system within jurisdictions. Companies may often receive benefits or grants through the transfer system, rather than manifesting in tax concessions or incentives. For parity, it is suggested that GRI consider designing disclosures for transfers received so that interested third parties can see both what companies are receiving from government, regardless of whether it's the tax or transfer system, as well as what they are paying back. This approach would enable full fiscal policy transparency.

At a practical level, the burden on companies to report on the hundreds or thousands of entities globally – if not done privately for tax administration – is significant and financial reporting systems are not

³ www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-taxadministrations-and-taxpayers.pdf

⁴ https://ec.europa.eu/info/publications/proposal-directive-corporate-tax-transparency-country-country-reporting_en

⁵ https://ec.europa.eu/info/sites/info/files/160412-synopsis_en.pdf

⁶ <https://www.pwc.com/gx/en/tax/publications/assets/tax-transparency-and-country-by-country-reporting.pdf>

designed for such a purpose. The disclosures could be viewed as onerous and impractical with limited public utility.

Specific comments are:

- @425 *Disclosure XXX-4-b-i*: Further guidance is required including reporting on a consolidated or single entity basis, inclusion (or not) of permanent establishments/trusts/partnerships/joint ventures/minority shareholdings and definition of 'principal entities'. It should be noted that multinationals may have thousands of entities worldwide for legitimate reasons so that counts of entities may not necessarily be comparable across companies, nor be helpful in determining tax payment behaviours.
- @443 *Guidance for Disclosure XXX-4-b-iv* can be useful but assumes profit and tax is driven by labour. For many multinationals, intellectual property and intangibles are key profit drivers so significant economic profit can be generated from a small pool of highly qualified labour (e.g. Silicon Valley) or even simply from the licensing of intellectual property (e.g. Coca Cola) or rights to copyrighted processes (e.g. McDonalds). Many high labour-intensity functions (e.g. clothing manufacturing, food harvesting) are low value, low margin activities.
- @468-471 *Disclosure XXX-4-a-i*: further definition of 'revenues by third-party sales' is required. Depending on the company's activities, does it include revenues from advertising/interest/royalties/rent/fees?
- @493 – for VAT/GST is it reported on a gross or net basis? @569-572 *Guidance for clause 1.5.1* should also clarify whether this includes federal, state, local and other taxes as well as levies.
- @495 *Clause 1.5.4* requires further definition of 'significant uncertain tax positions'. Is this limited to issues under tax administration audit that a publicly-listed company would be required to disclose to shareholders as @580 *Guidance for clause 1.5.4* seems to suggest. It should be noted that this is market sensitive information and that many issues are litigated/mediated and take a long time to resolve. Often, a multinational will encounter different treatment between jurisdictions which needs to be resolved via Mutual Assistance. A materiality threshold would be helpful.
- @ 537 –Labour and tangible assets are not the only profit drivers for a 21st century business. For some manufacturers (Toyota, General Electric), financial assets are a large component of their business and profit. For digital businesses (Facebook, Apple), much of the profit is generated by intangibles. Therefore, the exclusion of such assets may lead to misinterpretation of the data in that it presumes that labour and tangible assets are the primary drivers of profit and therefore corporate tax.
- @548-557: reconciliation items are numerous. Financial accounts are created for financial reporting, tax accounts are for a different purpose. To do this on a country-by-country basis may be extremely onerous given the number of legitimate reconciliation items in any given jurisdiction. Materiality and information value should be considered.

- @559 – preferential tax treatment may be commercial in-confidence and have justifiable economic reasons (e.g. encouraging inward investment for developing countries; no tax on income from World Bank-funded initiatives). Many jurisdictions build in specific incentives for particular groups/industries into legislation – is this included (e.g. research & development tax offsets, venture capital exemptions)? Given the variety of incentives and different mechanisms by which they are achieved, examples would be useful.

Question 4: Do you have any comments on the definitions included in the glossary of GRI XXX: Tax and Payments to Governments (line numbers 588 - 625)? Are there any additional terms in the draft Standard that need to be defined?

- @248 'Tax haven' needs to be defined

Question 5: Are there additional references, other than those listed in GRI XXX: Tax and Payments to Governments (line numbers 626 - 635), that could be useful in understanding and applying the Standard?

At the jurisdictional level, there will be specific tax administration products/templates, legislation and guidance that will reflect adaptations of OECD CbCR reporting or other guidance that may assist.

Rio Tinto's Taxes Paid 2017 report is a positive example of public tax transparency. The GRI Standards should be cross-referenced against this to see whether it satisfies everything – it can be taken as an example of what a company can reasonably be asked to publicly disclose (note: they do not include CbRC data related to revenue or functionality, nor does it list all entities in its corporate group – just main countries where Rio has revenue-generating operations or projects).

56 other companies in Australia also publish reports under the Voluntary Tax Transparency Code⁷.

The benefit of such reports is the narrative that explains the data. This is critical to an improved third party understanding of the company's practices. It enables the company to provide sufficient supporting explanatory material and provides flexibility in terms of what can be practically disclosed. This can ultimately be of greater benefit to the public debate than a large volume of data without context.

Further, the ATO has published a 'Tax risk management and governance review guide' for large businesses in Australia reflecting the administration's expectations. In Australia at least, it could be expected that companies undertaking such a review of the tax governance and risk management would

⁷ <https://data.gov.au/data/dataset/f71709a8-2eeb-4592-ad1f-443f7f520186/resource/335b98f1-5c1b-45a0-8739-dd627da61463/download/tc-reports-public-version.xlsx>

have sufficient evidence to satisfy GRI Standards⁸. However, it should be noted that such material prepared by the company is not intended for public disclosure and may include commercially sensitive information.

Question 6: The GRI Standards are designed to help organizations disclose meaningful and comparable information about their economic, environmental, and social impacts. This information can then be used by stakeholders such as investors, civil society organizations, and others, to make informed decisions. The disclosures in GRI XXX: Tax and Payments to Governments allow report users to understand an organization's tax practices in relevant jurisdiction.

Are there any disclosures in GRI XXX: Tax and Payments to Governments that are not critical to understanding an organization's tax practices? Are there any critical disclosures missing from GRI XXX: Tax and Payments to Governments that are necessary to understanding an organization's tax practices?

There is significant scope to draw misleading or confused conclusions from the standards requiring public reporting of private CBrC disclosures to tax administrations. It is unclear as to whether the information required will assist in informed decision making or rather generate misinformed commentary.

In Australia, the mandatory annual publication of company tax data for selected entities⁹ generates annual public discussion, often asserting the level of tax paid is 'unfair' or wrong. However, the reality is that the published data is insufficient to fully assess the company's tax compliance. In the clear majority of cases, the amount of tax paid is correct at law and merely reflects the level of concessions/exemptions, accounting to tax differences, tax credits and application of carried forward losses. To illustrate this, the ATO also publishes a narrative around its approach to reviewing the tax compliance of these companies to explain common differences and provide assurance that anomalies are detected and reviewed¹⁰.

It is important to recognise that any public reporting of tax data can only be useful when presented in context and with explanatory narrative. In the same way that tax administrations cannot definitively identify tax compliance or non-compliance from the data provided annually by companies, the issue is magnified when third party interests with no legal authority to review a company's activities begin to draw conclusions which may be erroneous and unfair to the company.

⁸ <https://www.ato.gov.au/printfriendly.aspx?url=/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide/>

⁹ <https://data.gov.au/dataset/ds-dga-c2524c87-cea4-4636-acac-599a82048a26/details>

¹⁰ <https://www.ato.gov.au/General/Tax-and-Corporate-Australia/>

Question 7: If you are a reporting organization, do you believe the draft Standard as it is presented in this form and/or the topic of tax and payments to governments, would be material for your organization?

No comment.

Question 8: If you represent an organization that is currently reporting publicly on tax and payments to governments, how do the disclosures in GRI XXX: Tax and Payments to Governments compare to what you are currently reporting? Is your organization subject to any existing public reporting requirements on tax and payments to governments? If so, which one/s?

No comment.

Question 9: Do you have any other comments or suggestions related to this draft Standard?

An increasing number of transparency directives – voluntary and mandatory – are being developed. The GRI should align with these or leverage off these as much as possible. Examples include:

- Chapter 10 of EU Accounting Directive 2013/34
- the Extractive Sector Transparency Measures Act
- Voluntary Extractive Industries Transparency Initiative¹¹
- Australian Tax Transparency Bills¹²
- Australian Voluntary Tax Transparency Code
- UK Reports on Payments to Governments Regulations 2014 No. 3209¹³.

Further, the proposed disclosures are an aspirational set of standards that require corporates to disclose detailed operational information and structures. It should be recognised that tax is not the primary driver of business decisions and that tax outcomes are not necessarily reflective of the company's compliance stance or corporate citizenry, but rather reflect each jurisdiction's policy settings, the value of each component of a global supply chain and the business decisions made by the company. CPA Australia member feedback has suggested that disclosure of commercially sensitive information may have negative consequences for commercial activities and potentially government policy.

¹¹ <https://eiti.org/>

¹² <https://www.legislation.gov.au/Details/C2015B00136>

¹³ <http://www.legislation.gov.uk/uksi/2014/3209/contents/made>

We note that *Guidance XXX-1-a-iv* is operating in an area of friction. The reality is that there can be conflict between the societal expectation of how a company contributes to economic development and the commercial reality (operations and business structuring). The value judgment that a company should contribute to the broader economic needs of the countries in which it operates contrasts with the requirements of a company to comply with the laws and regulations of those countries.

At a practical level, GRI standards should be mindful of:

- Business and accounting systems are not constructed in a way that enables some of this information to be easily generated. The proposed disclosures may be a high cost exercise and the benefits for the companies involved need to be more clearly articulated.
- The level of detail required to satisfy the standards should be better specified. For multinationals with operations in many countries (not to mention federal, state, local levels of government), there will be tailored approaches depending on the requirements of the jurisdictions as well as the headquarters and subsidiaries.